

claim on the merits” must be raised in a successive habeas petition. Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (emphasis in original).

[A] Rule 60(b) motion that attacks the underlying conviction presents a district court with two procedural options: (i) the court may treat the Rule 60(b) motion as a second or successive habeas petition, in which case it should be transferred to [the Second Circuit] for possible certification, or (ii) the court may simply deny the portion of the motion attacking the underlying conviction as beyond the scope of Rule 60(b).

Harris v. United States, 367 F.3d at 77 (internal quotations omitted and emphasis removed).

Petitioner’s Rule 60(b) motion does not challenge the integrity of her habeas proceeding. Rather, petitioner brings a new claim for relief. Specifically, petitioner, relying on Martinez v. Ryan, 566 U.S. 1 (2012), argues she lacked a meaningful opportunity to litigate constitutional challenges to her conviction because of the piecemeal review of her ineffective assistance of counsel claims in different forums. “Given the opportunity to raise these issues earlier,” petitioner cannot now “add a new ground for relief and use Rule 60(b) to circumvent the requirements of the AEDPA.” United States v. Spigelman, 2017 WL 2275022, at *4 (S.D.N.Y. May 24, 2017) (internal quotation omitted).¹

To the extent petitioner argues her motion is based on a “new rule of constitutional law,” 28 U.S.C. § 2244, Martinez v. Ryan was decided in 2012, long before petitioner filed her habeas petition in 2016. Moreover, petitioner has not cited any progeny of Martinez v. Ryan decided since her habeas petition that would constitute a new rule of constitutional law.

Accordingly, petitioner’s motion is beyond the scope of Rule 60(b).

¹ Petitioner will be provided with copies of all unpublished opinions cited in this decision. See Lebron v. Sanders, 557 F.3d 76, 79 (2d Cir. 2009).

CONCLUSION

Petitioner's motion for relief from final judgment is DENIED.

The Clerk is instructed to terminate the motion. (Docs. ##32, 33).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith; therefore, in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: October 18, 2019
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge